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3:96-CV-00888 UNITED REPORTING V. LUNGREN

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BY:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED REPORTING PUBLISHING  
11 CORP., a California Corporation,

Plaintiff/Appellee

12 vs.

13 CALIFORNIA HIGHWAY PATROL, et al.

14 Defendants.

CASE NO. 96 CV0888-B  
97-55111

**FINAL JUDGMENT ON CONSENT**

Date:

Time:

Judge: Honorable Rudi M.  
Brewster

17 United Reporting Publishing Corporation (hereafter  
18 "United Reporting") and Los Angeles Police Department (hereafter  
19 "LAPD"), the sole remaining parties to this action, hereby agree  
20 and consent to entry of judgment in this action against LAPD and  
21 in favor of United Reporting as set forth below. This Final  
22 Judgment on Consent constitutes a final judgment binding on all  
23 parties to this action.

**IT IS ORDERED, ADJUDGED, AND DECREED:**

25 A. This Court has subject matter jurisdiction over this  
26 action and has personal jurisdiction over the parties.

27 B. The following decisions contain findings of material  
28 facts and conclusions of law made in this case: *United Reporting*

1      Publishing Corporation v. Lungren, et. al., 946 F. Supp. 822  
2      (S.D.Cal. 1996); *United Reporting Publishing Corporation v.*  
3      *California Highway Patrol and Los Angeles Police Department*, 146  
4      F. 3d 1133 (9th Cir. 1998); *Los Angeles Police Department v.*  
5      *United Reporting Publishing Corporation*, 120 S.Ct. 483, 145  
6      L.Ed.2d 451 (1999); and *United Reporting Publishing Corporation*  
7      *v. California Highway Patrol and Los Angeles Police Department*,  
8      Order of the Ninth Circuit Court of Appeal dated November 1,  
9      2000. Additional findings of fact and conclusions of law  
10     supporting this Final Judgement On Consent are set forth in the  
11     paragraphs below.

12       C.    United Reporting made a facial and as-applied challenge  
13     to a provision of the California Public Records Act, California  
14     Government Code section 6254(f) as that provision was amended,  
15     effective July 1, 1996, pursuant to Senate Bill 1059. Only the  
16     as applied challenge remains and is addressed by this Final  
17     Judgment on Consent. See *Los Angeles Police Department v. United*  
18     *Reporting Publishing Corporation*, 120 S.Ct. 483 (1999).

19       D.    California Government Code section 6254(f)(3)  
20     (hereafter "section 6254(f)(3)") provides that state and local  
21     law enforcement agencies shall make public: "the current address  
22     of every individual arrested by the agency and the current  
23     address of the victim of a crime, where the requester declares  
24     under penalties of perjury that the request is made for a  
25     scholarly, journalistic, political, or governmental purpose, or  
26     that the request is made for investigation purposes by a licensed  
27     private investigator . . . . Address information obtained  
28     pursuant to this paragraph shall not be used directly or

1 indirectly to sell a product or service to any individual or  
2 group of individuals, and the requester shall execute a  
3 declaration to that effect under penalty of perjury."

4       E. United Reporting is an independently owned and operated  
5 private publishing service. It employs journalists, with press  
6 badges issued by the California Highway Patrol, to compile and  
7 publish crime beat news and information, including the names,  
8 addresses, and offenses charged of recent arrestees. United  
9 Reporting is entitled to First Amendment protection for its  
10 journalistic activities and publications. *Lovell v. Griffin*, 303  
11 U.S. 444, 352 (1938). United Reporting's journalistic activities  
12 and publications fall within prong one of section 6254(f)(3).

13       F. The second requirement of section 6254(f)(3), limiting  
14 the "direct and indirect" use of arrestee addresses, prevents  
15 United Reporting from applying for and publishing arrestee  
16 addresses because it cannot sign the required declaration without  
17 committing perjury and risking prosecution in violation of the  
18 First and Fourteenth Amendments to the United States  
19 Constitution. Section 6254(f)(3) plainly states the information  
20 sought by United Reporting cannot be released without the  
21 declaration required by the statute. Although United Reporting  
22 has never directly solicited arrestees, United Reporting knows  
23 many subscribers of its publications use the arrestee addresses  
24 to sell products and services, and otherwise engage in  
25 solicitation. Given the history of the statute and law  
26 enforcement's explicit attempts to target United Reporting and  
27 preclude it from publishing arrestee addresses to its  
28 subscribers, coupled with its knowledge of its subscribers' uses,

1 if it signed the declaration required by the statute it could be  
2 prosecuted for indirectly using arrestee addresses to sell a  
3 product or service. Accordingly, United Reporting cannot satisfy  
4 the statutory hurdle erected by section 6254(f)(3), and the  
5 statute precludes release of the information without the  
6 declaration required by the statute. As a result, United  
7 Reporting cannot obtain the information needed to continue its  
8 newsletter and information services activities, and the statute  
9 operates as a restraint on United Reporting's lawful speech in  
10 violation of the First and Fourteenth Amendments to the United  
11 States Constitution. United Reporting's as-applied challenge is  
12 thus perfected.

13       G. As applied to United Reporting's activities as  
14 described in this lawsuit, section 6254(f)(3) violates United  
15 Reporting's rights under the First Amendment to the United States  
16 Constitution by preventing United Reporting from engaging in its  
17 journalistic activities as described above.

18       H. For the reasons set forth in paragraphs B through G  
19 above, judgment is therefore entered that as applied to United  
20 Reporting, Government Code section 6254(f)(3) is unconstitutional  
21 in that it violates United Reporting's rights under the First and  
22 Fourteenth Amendments to the United States Constitution.

23       I. Judgement is also entered against LAPD and in favor of  
24 United Reporting for the total sum of \$382,625.85, which consists  
25 of \$352,226.25 in attorneys' fees and \$30,399.60 in costs, to be  
26 paid within 10 days after entry of this judgment by the Court.  
27 Said amount shall accrue interest at the legal rate for post-  
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1 judgment interest until paid if it is not timely paid in  
2 accordance with this provision.

3 J. This Action is dismissed with prejudice, provided,  
4 however, that this Court shall retain jurisdiction of this case  
5 for enforcement of the Settlement and this Final Judgment on  
6 Consent.

7 K. The parties hereby consent and agree to entry of this  
8 Consent Judgment without further notice and waive service  
9 thereof.

10 Dated: Aug 8, 2001

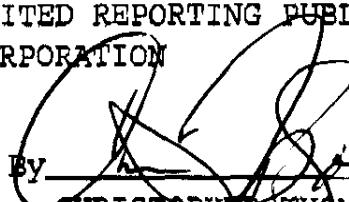
11 GRAY CARY WARE & FREIDENRICH LLP

12 By 

13 GUYLYN R. CUMMINS  
14 ATTORNEYS FOR UNITED REPORTING  
PUBLISHING CORPORATION

15 Dated: July 21, 2001

16 UNITED REPORTING PUBLISHING  
CORPORATION

17 By 

18 CHRISTOPHER THOMPSON, CEO and  
President

20 Dated: July 18, 2001

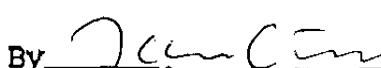
21 CITY ATTORNEY, CITY OF LOS ANGELES

22 By 

23 JAMES AXTELL, DEPUTY CITY  
ATTORNEY FOR LOS ANGELES  
POLICE DEPARTMENT

25 Dated: July 20, 2001

26 LOS ANGELES POLICE DEPARTMENT

27 By 

28 AUTHORIZED REPRESENTATIVE FOR  
THE LOS ANGELES POLICE  
DEPARTMENT

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9 thereof.

10 Dated: July       , 2001                   GRAY CARY WARE & FREIDENRICH LLP  
11

12 By \_\_\_\_\_  
13 GUYLYN R. CUMMINS  
14 ATTORNEYS FOR UNITED REPORTING  
PUBLISHING CORPORATION

15 Dated: July       , 2001                   UNITED REPORTING PUBLISHING  
16 CORPORATION  
17

18 By \_\_\_\_\_  
19 CHRISTOPHER THOMPSON, CEO and  
President

20 Dated: July 18, 2001                   CITY ATTORNEY, CITY OF LOS ANGELES  
21

22 By J. Axtell  
23 JAMES AXTELL, DEPUTY CITY  
ATTORNEY FOR LOS ANGELES  
POLICE DEPARTMENT  
24

25 Dated: July 20, 2001                   LOS ANGELES POLICE DEPARTMENT  
26

27 By J. Cummins  
28 AUTHORIZED REPRESENTATIVE FOR  
THE LOS ANGELES POLICE  
DEPARTMENT

1  
IT IS SO ORDERED:  
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3 Dated: 8-13, 2001  
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10 UNITED STATES DISTRICT JUDGE  
11 HONORABLE JUDGE RUDI M. BREWSTER

PROOF OF SERVICE

I am a resident of the state of California, over the age of eighteen years, and not a party to the within action. My business address is Gray Cary Ware & Freidenrich, 401 B Street, Suite 1700, San Diego, California 92101-4297. On August 8, 2001, I served the within documents: **FINAL JUDGMENT ON CONSENT**

- By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

James K. Hahn, City Attorney  
Cecil Marr  
Senior Asst. City Attorney  
James Axtell  
Deputy City Attorney  
200 North Main Street,  
Seventeenth Floor  
Los Angeles, CA 90012-4129  
Tel: (213) 485-6393  
Fax: (213) 485-8898

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I deposited the above document(s) for facsimile transmission in accordance with the office practice of Gray Cary Ware & Freidenrich LLP for collecting and processing facsimiles. I am familiar with the office practice of Gray Cary Ware & Freidenrich LLP for collecting, processing, and transmitting facsimiles, which practice is that when a facsimile is deposited with the Gray Cary Ware & Freidenrich LLP personnel responsible for facsimiles, such facsimile is transmitted that same day in the ordinary course of business. The facsimile of the above document(s) was transmitted to the above parties.

The facsimile was transmitted by 4:30 p.m. on August 8, 2001. The facsimile number of the sending machine is 619-236-1048 from San Diego, California

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on August 8, 2001 at San Diego, California.

Lorri J. Kanski

Lorri J. Kanski